

**FILED**

NOV - 6 2007

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *AM* DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Criminal No. **07CR2899-LAB**  
 )  
Plaintiff, ) **FINDINGS AND RECOMMENDATION OF**  
 ) **THE MAGISTRATE JUDGE UPON A**  
v. ) **PLEA OF GUILTY**  
 )  
**GILBERTO LIZARRAGA,** )  
 )  
Defendant. )

Upon Defendant's request to enter a plea of Guilty pursuant to Rule 11 of the Federal Rules of Criminal Procedure, this matter was referred to the Magistrate Judge by the District Judge, with the written consents of the Defendant, counsel for the Defendant, and counsel for the United States.

Thereafter, the matter came on for a hearing on Defendant's plea of guilty, in full compliance with Rule 11, Federal Rules of Criminal Procedure, before the Magistrate Judge, in open court and on the record.

In consideration of that hearing and the allocution made by the Defendant under oath on the record and in the presence of counsel, and the remarks of the Assistant United States Attorney,

///

1       **I make the following FINDINGS - that the Defendant**  
2 **understands:**

- 3       1.    the right to persist in a plea of "not guilty";
- 4       2.    the right to a speedy and public trial;
- 5       3.    the right to be tried by a jury, or the ability to
- 6       waive that right and have a judge try the case without
- 7       a jury;
- 8       4.    the right to the assistance of counsel at trial;
- 9       5.    that, at trial, there would be the right to confront
- 10       and cross-examine the witnesses against the Defendant;
- 11       6.    that, at trial, there is the right to present a
- 12       defense, and the right to have witnesses subpoenaed to
- 13       testify on the Defendant's behalf;
- 14       7.    that, at trial, the Defendant would have the right
- 15       against compelled self-incrimination;
- 16       8.    the nature of the charge filed in this case;
- 17       9.    the maximum possible sentence that could be imposed
- 18       (including imprisonment, fine, term of supervised
- 19       release, and mandatory special assessment), the effect
- 20       of a supervised release term, and that the sentencing
- 21       guidelines are only advisory so that the Court may
- 22       sentence Defendant up to the statutory maximum;
- 23       10.   the terms of the plea agreement;

24 **I further find that:**


- 25       11.   that Defendant's plea of guilty is made knowingly and
- 26       voluntarily;
- 27       12.   the Defendant is competent to enter a plea; and
- 28       13.   there is a factual basis for Defendant's plea.

1 I therefore RECOMMEND that the District Judge accept the  
2 Defendant's plea of guilty.

3 The sentencing hearing will be before United States District  
4 Judge LARRY A. BURNS, on JANUARY 28, 2008, at 9:30 AM.

5 Objections to these Findings and Recommendation must be  
6 filed within 14 days of the date of this order.

7  
8  
9 Dated: 11/6/07

  
Honorable JAN M. ADLER  
United States Magistrate Judge

10  
11 Copies to:

12 Hon. LARRY A. BURNS  
13 U.S. District Judge

14 United States Attorney

15 KURT HERMANSEN  
16 Counsel for Defendant

U.S.A. vs GILBERTO LIZARRAGA

No. 07CR2899-LAB

The Court finds excludable delay, under the section indicated by check ( ☒ ),  
commenced on \_\_\_\_\_ and ended on \_\_\_\_\_; ( )  
\_\_\_\_\_ 11-6-07 and ended on 1-28-08. ( )

- 3161(h)  
\_\_\_\_ (1) (A) Exam or hrg for **mental or physical incapacity**  
\_\_\_\_ (1) (B) **NARA examination** (28:2902)  
\_\_\_\_ (1) (D) State or Federal trials or **other charges pending**  
\_\_\_\_ (1) (E) **Interlocutory appeals**  
\_\_\_\_ (1) (F) **Pretrial motions** (from flg to hrg or other prompt dispo)  
\_\_\_\_ (1) (G) **Transfers from other district** (per FRCrP 20, 21 & 40)  
\_\_\_\_ (1) (J) **Proceedings under advisement** not to exceed thirty days  
\_\_\_\_ Misc proc: Parole or prob rev, deportation, **extradition**  
\_\_\_\_ (1) (H) **Transportation** from another district or to/from examination  
or hospitalization in ten days or less  
☒ (1) (I) Consideration by Court of **proposed plea agreement**  
\_\_\_\_ (2) **Prosecution deferred** by mutual agreement  
\_\_\_\_ (3) (A) (B) **Unavailability of defendant or essential witness**  
\_\_\_\_ (4) Period of **mental or physical incompetence** of defendant to  
stand trial  
\_\_\_\_ (5) Period of **NARA commitment or treatment**  
\_\_\_\_ (6) **Superseding indictment and/or new charges**  
\_\_\_\_ (7) **Defendant awaiting trial of co-defendant** when no severance  
has been granted  
\_\_\_\_ (8) (A) (B) **Continuances** granted per (h) (8)-use "T" alone if more than  
one of the reasons below are given in support of continuance  
\_\_\_\_ (8) (B) (I) 1) Failure to grant a **continuance** in the proceeding  
would result in a **miscarriage of justice** and  
the ends of justice outweigh the best interest  
of the public and the defendant in a speedy trial.  
(Continuance - miscarriage of justice)  
2) Failure to grant a **continuance** of the trial would result in  
a miscarriage of justice as the defendant has tendered a  
guilty plea to a magistrate judge and is awaiting a  
determination as to whether the plea will be accepted.  
(Continuance - tendered a guilty plea)  
☒ (8) (B) (ii) 2) **Case unusual or complex**  
\_\_\_\_ (8) (B) (iii) 3) **Indictment** following arrest **cannot be filed** in thirty (30) days  
\_\_\_\_ (8) (B) (iv) 4) **Continuance** granted in order to obtain or substitute counsel,  
or give reasonable time to prepare  
(Continuance re counsel)  
\_\_\_\_ 3161(I) Time up to **withdrawal of guilty plea**  
\_\_\_\_ 3161(b) **Grand jury indictment time extended** thirty (30) more days

Date 11/6/07

DM  
Judge's Initials

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